IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

MFA.No. 18 of 2003(A)

OPMV.352/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT: PETITIONER

SAJEV M.P. S/O. PURUSHOTHAMAN,
MUKKATUKARIYIL, POOTHOTTA P.O.,MANAKUNAM VILLAGE,
VAIKOM.

BY ADV. SMT.LEKHA SURESH
SMT.NILA. C.V.

RESPONDENTS: RESPONDENTS
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1. GIREESH KUMAR S/O. SURENDRA NATHA PILLAI
NANTHIYATU HOUSE, NADUVILA VILLAGE, VAIKOM.
(D/L M.K.785/77) (DRIVER KRO 615)

2. GEORGE THOMAS S/O. THOMAS,
PANDALLOOR, VAIKOM P.O. (OWNER KRO 615)

3. THE UNITED INDIA INSURANCE CO. LTD.,
TRIPPUNITHURA, REPRESENTED BY DIVISIONAL MANAGER,
KOTTAYAM (CERTIFICATE NO. 31/40/43824/91
POLICY NO. 102/31/40/11/49/39/91 (KRO 615)

4. GANGADHARAN NAIR S/O. RAMAKRISHNAN NAIR,
KURIKKAMPATTU HOUSE, THIRUVANKULAM VILLAGE,
ERNAKULAM (D/L/NO.E/304/84) DRIVER KEF 1947)

5. K.P.CHANDRASEKHARAN NAIRS/O. APPU PILLAI
CHAITHANYA VIHAR, UDYAMPEROOR. (OWNER KEF 1947)

6. THE NEW INDIA ASSURANCE CO. LTD.,
THRIPPUNITHARA- REPRESENTED BY THE DIVISIONAL
MANAGER, KOTTAYAM. (CERTIFICATE NO. 658-
POLICY NO. 31761 00201 290) (KEF 1947)

BY ADV. SRI.A.R.GEORGE
SRI.KKM.SHERIF

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 18 OF 2003

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Dated this the 4th day of June, 2007

J U D G M E N T

Petitioner **in O.P(MV) No.352 of 1996 on the file of the Motor Accidents Claims Tribunal, Kotayam is the appellant. Appellant was a passenger in a stage carriage bearing Reg. No.KRO-615 from Chempu to Poothotta. An accident took place at about 9.20 p.m. on 21.2.1992 involving the vehicle in which the appellant was travelling and another stage carriage bearing Reg. No.KEF-1947. Petitioner sustained injuries. Petitioner filed the O.P. claiming compensation impleading the owners, drivers and insurers of both the vehicles. Third respondent is the insurer of the vehicle in which the petitioner was traveling. Sixth respondent is the insurer of the other vehicle, KEF-1947. The allegation in the O.P. was that the accident occurred due to the rash or negligent of the 4th respondent driver. Third respondent admitted that there was a valid policy of insurance. In the O.P. petitioner gave number of a policy alleged to have been issued by the 6th respondent. Sixth respondent contended that the policy mentioned by**

petitioner in O.P. was not a policy issued by it to the stage carriage. But it was a policy issued to a Scooter. The definite contention put forward by the 6th respondent was that the policy number shown in the O.P. as well as in the police charge sheet was not the one issued by it in respect of the bus involved in the accident. It is very pertinent to note that the 6th respondent had no contention that it had not issued any policy in respect of that vehicle.

2. Shri K.K.M. Sheriff, learned counsel appearing for the 6th respondent, has strenuously argued before me that when the policy number given by the petitioner is found to be false, it is the duty of the petitioner or at least the owner and driver to furnish the correct number of the policy.

3. It is to be noted that the vehicle involved was a stage carriage. Merely because the policy number given was not correct, it is not possible to hold that the vehicle was not covered with a valid policy of insurance at all especially in view of the fact that there was no denial of the policy by the 6th respondent. So the finding of the Tribunal that the 6th respondent is not liable to indemnify the insured is not correct.

4. Tribunal had found that the accident occurred due to the rash or negligent driving of both the stage carriages by respondents 1 and 4, drivers. Since the proportion was not fixed, the only inference possible is that both the respondents are equally liable and responsible for the accident which can be fixed as 50:50. The Tribunal, after considering all aspects, found that the petitioner is entitled to get a sum of Rs.11,200/- as compensation and awarded the same.

5. Learned counsel appearing for the appellant has strenuously argued before me that the compensation awarded by the Tribunal is highly inadequate. Tribunal has awarded Rs.1,500/- towards compensation for loss of earning, Rs.250/- towards transportation to hospital, Rs.250/- towards damages to clothing and Rs.200/- towards medical expenses. Wound certificate shows that 3 teeth were broken with shaking and bleeding from the gum. So necessarily those teeth are to be repaired and treated for which the Tribunal out to have awarded Rs.1,500/- more. The Tribunal has awarded Rs.7,000/- towards compensation for pain and suffering. The Tribunal ought to have awarded Rs.10,000/- under that count. The Tribunal awarded Rs.2,000/- for loss of

amenities of life. Considering the fact that the petitioner had to remove three teeth, the Tribunal ought to have awarded Rs.5,000/- under that count. So the appellant is entitled to get Rs.7,500/- more as compensation with 7% interest per annum from the date of petition till date of realisation. .

6. In view of the finding that the accident occurred due to the negligence of respondents 1 and 4, I am of the view that the Tribunal ought not have exonerated the insurers. So the award passed by the Tribunal has to be modified.

In the result, the appeal is allowed in part. The award passed by the Tribunal is modified. The finding of the Tribunal that respondents 3 and 6 are not responsible for the compensation awarded is set aside. Respondents 3 and 6 are directed to deposit the amount awarded by the Tribunal and the additional compensation of Rs.7,500/- awarded as per this judgment also in equal proportion of 50:50.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 18 OF 2003

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J U D G M E N T

4TH JUNE, 2007